IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANTS:	Buskens et al.		EXAMINER:	Rongfa Philip Wang	
APPLN. NO.:	10/768,308	GROUP:	2191	CONF. NO.	6327
FILED:	01/30/2004	DOCKET:	LUC-450/Buskens 6-1-1-1-2		
TITLE:	FIRST AND SECOND MANAGER COMPONENTS THAT PERFORM ONE OR MORE FIRST AND SECOND MANAGEMENT OPERATIONS ON A SOFTWARE AND/OR HARDWARE ENTITY				

CERTIFICATE OF FACSIMILE TRANSMISSION

I hereby certify that this correspondence is being sent via facsimile transmission to Commissioner for Patents, Mail Stop AF, Group Art Unit 2191, **Attention: Rongfa Philip Wang**, P.O. Box 1450, Alexandria, VA 22313-1450, at fax number (571) 273-8300, on December 12, 2008.

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Date of Signature: December 12, 2008

Commissioner for Patents
Mail Stop AF
Group Art Unit 2191
Attention: Examiner Rongfa Philip Wang
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PRE-APPEAL BRIEF REQUEST FOR REVIEW

Dear Sir:

Applicants request review of the final rejection of this application. No amendments are being filed with this request. This request is being filed with a Notice of Appeal and a request for a one month time extension giving applicants until December 20, 2008 to file a timely response following the Advisory Action of November 12, 2008 and Final Office Action mailed August 20, 2008. Thus, this response is timely filed. The review is requested for the reasons stated on the attached sheets (not more than 5 pages).

Remarks

Applicants request Pre-Appeal Brief Review of the final office action for reasons stated below.

Claim Rejections - 35 U.S.C. § 101

Claims 1-9, 11-15, and 21-22 were rejected under 35 U.S.C. § 101 as allegedly being directed to non-statutory subject matter. The Final Office Action stated that "computer-readable signal-bearing media" is not considered patentable subject matter because the language can be interpreted as a signal. Applicants submit that the claimed subject matter is a medium through which a signal may travel or a medium which stores the signal, not the signal itself. Applicants note that the phrase "computer-readable signal-bearing media" was found to be patentable in US Patent 7,072,824 (claims 11-17), US Patent 6,904,596 (claims 14-17), and US Patent 6,754,771 (claims 14-20), and other issued patents.

Applicants respectfully request withdrawal of the § 101 rejections.

Claim Rejections - 35 U.S.C. § 112

Claims 1-9 and 11-22 were rejected under 35 U.S.C. § 112, first paragraph, as allegedly failing to comply with the written description requirement and for allegedly failing to comply with the enablement requirement. These rejections are respectfully, but most strenuously, traversed.

The Final Office Action stated that the limitation of "legacy management system" was indefinite. Applicants submit that the concept of a legacy management system is well known in the art. U.S. Patent App. Pub. No. 2005/0097201 recites "legacy management system" in independent claim 1. "Legacy management system" also appears in the specification of U.S.

Patent No. 7,451,925, U.S. Patent No. 6,199,762, and other issued patents. In addition, examples of "legacy" can be found in US Patent 7,406,682 (claim 1: "legacy software architecture"), US Patent 7,409,702 (claim 1: "legacy encryption"), US Patent 7,431,650 (claim 25: "legacy player tracking system"), US Patent 7,162,014 (claim 1: "legacy message systems"), US Patent 6,233,543 (claim 1: "legacy host applications"), and other issued patents.

Accordingly, applicants believe that the use of the term "legacy" to describe the "management system" is sufficiently clear.

Withdrawal of the § 112 rejections is therefore respectfully requested.

Claim Rejections - 35 U.S.C. § 102

Claims 1, 16, and 21 were rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by Baughman (U.S. Patent No. 6,408,399). Claims 1-9 and 11-22 were rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by Anderson (U.S. Patent App. Pub. No. 2003/0058796). These rejections are respectfully, but most strenuously, traversed.

Claim 1 recites that "the first manager component of the legacy management system and the second manager component ... are configured to *concurrently share management responsibility* for the software and/or hardware entity.

Baughman (column 2, lines 23-29) discloses:

> In the active state, the applications (software) residing on the computer are running and ready to accept and process data. In the standby state, certain applications are running, however, data is not accepted or processed. A primary function of a computer in the standby state is to monitor the other computers in the system and itself, and to assume an active state when necessary.

Baughman discloses that the computer in the standby state (e.g., computer 11) does not accept or process data. It is unclear how a computer that does not accept or process data can

perform management operations in order to concurrently share management responsibility. The standby computer monitors the other computers (e.g., computer 10) and itself. Baughman fails to disclose that both the active computer and the standby computer perform management operations on a software and/or hardware entity.

Baughman (column 5, lines 18-23) discloses:

> The system manager 120 and 130 also checks for and corrects errors, such as both computers 10 and 11 assuming an active state, no computer 10 or 11 in an active state, the active computer unable to access the shared disks 12 and 13, and a non-active computer with access to the shared disks 12 and 13.

Baughman discloses that an instance where both computers 10 and 11 have access to the shared disks is an error condition. Accordingly, the computers are not configured to concurrently share management, but to instead take full control. Baughman teaches away from concurrent shared management responsibility of the disks.

The Final Office Action (page 18, section 3) states:

> "One interpretation of the meaning of concurrent is acting in conjunction, or cooperating. Under this interpretation, an active/standby setup fulfills a cooperating configuration."

The Final Office Action's discussion of "concurrent" has omitted a portion of the claim limitation. Claim 1 recites "concurrently share". The active and standby components disclosed by Baughman do not concurrently share management responsibility and instead take full control at alternate times, as discussed above.

Baughman also fails to make any mention of a management component of a legacy management system. In contrast, Baughman discloses that the second computer replicates the processing capabilities of the active computer (col. 1, lines 24-36).

Anderson (paragraph 19) discloses:

> ... The signaling manager receives its working instructions from the traffic manager and from the provisioning manager for each packet switch, router and interface access device of the packet network, which, among other things, enables the signaling manager to set up and dynamically change virtual circuits, paths and channels on a real-time basis...

Anderson discloses that the signaling manager receives instructions from the traffic manager and the provisioning manager. Accordingly, the signaling manager does not share management responsibility with either the traffic manager and provisioning manager but merely acts upon their instruction as an intermediary. Anderson fails to disclose that any of the signaling manager, the traffic manager, and the provisioning manager are from a legacy management system. Anderson fails to disclose the first manager component of the legacy management system and the second manager component, that comprises high availability services system software, that are configured to concurrently share management responsibility for the software and/or hardware entity.

The Office Action's citations to Baughman and Anderson all fail to meet at least one of applicants' claimed features. For example, there is no teaching or suggestion in the Office Action's citations to Baughman and Anderson of the first manager component and the second manager component that are configured to concurrently share management responsibility for the software and/or hardware entity, as recited in applicants' independent claim 1.

Withdrawal of the § 102 rejections is therefore respectfully requested.

In view of the above amendments and remarks, allowance of all claims pending is respectfully requested. If a telephone conference would be of assistance in advancing the prosecution of this application, the Examiner is invited to call applicants' attorney.

Respectfully submitted,

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